

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H", NEW DELHI
BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

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| | I.T.A. No. 6242/Del/2012 | |
| | A.Y. : 2009-10 | |
| Zebina Real Estate Pvt. Ltd., 1-E, Naaz Cinema Complex, Jhandewalan Extension, New Delhi – 110 055 (PAN: AAACZ2676A) | Vs. | Asstt. Commissioner of Income Tax, Circle 18(1), New Delhi |
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Assessee by : S/Sh. P. Dinodia & R.K. Kapoor,
CA
Department by : Sh. Tarun Seem, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XXI, New Delhi dated 12.10.2012 pertaining to assessment year 2009-10.

2. The issue raised in the appeal is that Ld. Commissioner of Income Tax (A) erred in upholding the order of the Assessing Officer in making disallowance of Rs. 10,00,000/- representing amount written off.

3. The assessee in this case is engaged in the business of real estate development and allied activities. During the year assessee ha written off an amount of Rs. 10 lacs in respect of the amount

refunded to the broker Sh. Jagdish Nain. It was submitted that Sh. Jagdish Nain, broker had paid a sum of Rs. 10,00,000/- to the farmers for purchase of 15.60625 acres of land in village Badshahpur. As the farmers were unwilling to sell the land, the amount of Rs. 10 lacs paid by the broker to the farmers remained unrealized. This amount of Rs. 10 lacs was claimed as amount written off. Assessing Officer opined that the above claim of the company was not genuine. He opined that assessee has not produced any communication / receipt from Jagdish Nain that he paid Rs. 10 lacs to the farmers on behalf of the company. Assessing Officer further opined that it was not clear that Sh. Jagdish Nain had paid a sum of Rs. 10 lacs to the farmers. Assessing Officer concluded as under:-

“Even if the amount is to be written off then the assessee is required to prove that the sum of Rs. 10 lacs has been included in the income for any previous year only the amount can be eligible for deduction u/s. 36(1)(vii) r.w.s. 36(2) of the I.T. Act, 1961, but the assessee has failed to prove the same.

The amount of Rs. 10 lacs paid is not allowable u/s. 37(1) as the assessee has not proved that such expenditure has been made wholly and exclusively for business purposes.

In view of the above facts, the claim of Rs. 10 lacs being amount written off is disallowed and added back to the total income of the assessee company.”

4. Upon assessee's appeal Ld. Commissioner of Income Tax (A) confirmed the Assessing Officer's action holding as under:-

"I have gone through the findings of the Assessing Officer in the assessment order and written submission of the Ld. Authorised Representative. In this regard, it has been submitted that an amount of Rs. 10 lacs was given to Sh. Jagdish Nain vide cheque dated 24/9/2008 which is reimbursement of payment made by him to various farmers to whom amount has been paid in cash / cheque in the month of February, 2008. In this regard, receipt dated 21.2.2008 has been filed, wherein, name of the persons have been mentioned, who have received the payments. It has been stated by the Ld. Authorised Representative that the deal could not materialize so the amount has been written off. In the order, Assessing Officer has observed that the sum of Rs. 10 lacs can only be allowed as eligible for deduction u/s. 36(1)(vii), if the same has been included in the income for any previous year. but in the instant case there is no such case as it is a reimbursement of the advance payment given to the farmers on behalf of the broker and it is not bad debt. So provision of section 36(1)(vii) r.w.s. is not applicable on the facts of the case. Furthermore, amount of Rs. 10 lacs is also not allowable u/s. 37(1) of the I.T. Act as payment made by broker to farmers on behalf of the appellant has not been found to be as per business expediency or business requirement of the appellant. I am in full agreement with the action of Assessing Officer in this regard."

5. Against the above order the assessee is in appeal before us.

6. We have heard both the counsel and perused the records. We find that as per the assessee's submissions, there was a proposal of acquisition of 15.60625 acres of land in village Badshahpur. This was initiated through the broker Sh. Jagdish Nain. During the negotiation with the land owners Sh. Jagdish Nain paid a sum of Rs.

10 lacs to them as advance. As the negotiation could not be finalized, land owners forfeited the amount advanced. In these circumstances, since the negotiation and the payment were made on behalf of the assessee, assessee reimbursed a sum of Rs. 10 lacs to Sh. Jagdish Nain through the bank account.

6.1 In these circumstances, it is the claim of the assessee that the assessee was engaged in the business of purchase and sale of lands through broker, this remains undisputed. Hence, it is the claim of the assessee that a sum of Rs. 10 lacs has been incurred wholly and exclusively for the business of the assessee. In support of the above claim in the paper book the assessee has submitted before us, the details of land and communication through Sh. Jagdish Nain; copy of receipt issued by the land owners for Rs. 2 lacs and Rs. 8 lacs; copy of account payee cheque for Rs. 10 lacs issued in favour of Sh. Jagdish Nain duly acknowledged alongwith the bank statement.

6.2 We have carefully gone through the above submissions and documents submitted by the assessee. We find that it is undisputed that assessee was engaged in the purchase and sale of land through brokers. In one such dealing Sh. Jagdish Nain had paid a sum of Rs. 10 lacs to the land owners on behalf of the assessee. The said deal did not materialize as no agreements could be reached regarding the rate of sale. The land owners to whom a sum of Rs. 10 lacs was paid, forfeited the same and did not return it. In these circumstances, assessee company had to reimburse Shri Jagdish Nain a sum of Rs. 10 lacs. The same amount was duly paid

through the account payee cheque. In these circumstances, in our considered opinion, the payment made by the assessee has to be allowed as business expenditure u/s. 37(1) of the I.T. Act. In this regard, we find that Id. Counsel of the assessee has placed reliance upon the decision of the Hon'ble Delhi High court in the case of C.I.T. vs. New Delhi Hotels Ltd. passed in I.T.A. No. 1258/2010 dated 22.3.2012 wherein it has been held as under:-

“Claim of bad debt – Business or Capital loss – In the assessment order dated 29.8.2006, the Assessing Officer disallowed bad debt of Rs. 44,28,000/- on the ground that provisions of Section 36(1)(vii) read with Section 36(2) of the Act were not satisfied as the amount had not been taken into account in computing income of the earlier years – it is not in dispute that the assessee is also in the business of constructing and developing buildings

– The amount of Rs. 44,28,000/- receivable from M/s Gulmohar Estate Ltd. paid towards purchase of flats were shown under the head 'loans and advances' in the balance sheet as on 31.3.1991 – It is also an admitted position that the possession of the flats agreed to be purchased by the assessee was not given to the assessee and, thus, the transfer of flats within the meaning of Income tax Act was not given to the assessee and, thus, the transfer of flats within the meaning of Income Tax Act was not completed – the transaction to purchase property from M/s Gulmohar Estate Ltd. was related or incidental to the assessee's business. After taking into account the intention of the assessee, it is well settled that it is the intention of the assessee which would matter in deciding as to whether the property purchased

were intended for carrying on business or to hold it as an investment coupled with the line of the business carried on by the assessee – Decided in favor of the assessee.”

6.3 We find that the ratio from the above High Court decision is also applicable on the facts of the case. A sum of advance of Rs. 10 lacs which was paid by Shri Jagdish Nain was on behalf of the assessee and the payment was related and incidental to the assessee’s business. The loss of the amount paid and the consequential reimbursement to Sh. Jagdish Nain was also incidental to the business of the assessee. In these circumstances, in the background of the aforesaid discussions and precedents, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, the appeal filed by the Assessee stands allowed. Order pronounced in the open court on 21/6/2013.

Sd/-

[A.D. JAIN]
JUDICIAL MEMBER

Date 21/6/2013

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant 2. Respondent
5. DR, ITAT

Sd/-

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

3. CIT 4. CIT (A)

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By Order,

Assistant Registrar, ITAT, Delhi Benches